Supreme Court, U.S.
FILED
OCT 18 1989
JOSEPH F. SPANIOL, JR
CLERK

No. 89-45

In The

Supreme Court of the United States

October Term, 1989

STATE OF HAWAII,

Petitioner,

v.

HAILA DIANE ROMAN,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Hawaii

PETITIONER'S REPLY MEMORANDUM

KEITH M. KANESHIRO
Prosecuting Attorney
City and County of Honolulu

WARREN PRICE, III*
Attorney General
State of Hawaii

WALLACE W. WEATHERWAX*
Deputy Prosecuting Attorney
City and County of Honolulu

STEVEN S. MICHAELS
Deputy Attorney General
State of Hawaii

**Counsel of Record*

1164 Bishop Street
Honolulu, Hawaii 96813
(808) 527-6401

State Capitol
Honolulu, Hawaii 96813
(808) 548-4740

Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

Page

ARGUMENT 1

CONCLUSION 6

TABLE OF AUTHORITIES

Page

CASES:

Ashwander v. TVA, 297 U.S. 288 (1936) 5

California v. Beheler, 463 U.S. 1121 (1983) 2

Duckworth v. Eagan, No. 88-317 (U.S. June 26, 1989) 2, 3, 5, 6

Hutto v. Davis, 454 U.S. 375 (1982) 2

Maryland v. Garrison, 480 U.S. 79 (1987) 4

Miranda v. Arizona, 384 U.S. 346 (1966) 1, 2, 3

Robinson v. Ariyoshi, 65 Haw. 641, 658 P.2d 287 (1982) 4

Schact v. United States, 398 U.S. 58 (1970) 4

Superintendent v. Hill, 472 U.S. 445 (1985) 4

United States v. Goodwin, 457 U.S. 368 (1982) 5

United States v. Mazurie, 415 U.S. 947 (1974) 5

United States v. Stanley, 483 U.S. 669 (1987) 2

STATUTE:

28 U.S.C. § 2101(c) (1982) 4

OTHER AUTHORITIES:

R. Stern, E. Gressman, and S. Shapiro, *Supreme Court Practice* (6th ed. 1986) 5

Rule 20.1 ..... 3, 4, 5

No. 89-45

In The

Supreme Court of the United States

October Term, 1989

STATE OF HAWAII,

Petitioner,

v.

HAILA DIANE ROMAN,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Hawaii

PETITIONER'S REPLY MEMORANDUM

I. ARGUMENT

The State's petition in this case establishes that the Supreme Court of Hawaii fundamentally misapplied this Court's rulings in *Miranda v. Arizona*, 384 U.S. 346 (1966), and their progeny, by excluding all of Haila Diane Roman's four confessions at the Honolulu police station following her polygraph test on January 15, 1987, on the basis that (1) each of Mrs. Roman's incriminating statements were made at a time when she had become " ' "the central focus of a separate criminal investigation" ' " (Pet. 12-16); and (2), prior warnings, given at the start of the

polygraph test, did not render the confessions otherwise admissible (*id.*16-20). The decision below is plainly inconsistent with the teachings of *California v. Beheler*, 463 U.S. 1121 (1983) (per curiam), and this Court's very recent decision in *Duckworth v. Eagan*, No. 88-317 (U.S. June 26, 1989), and, we submit, were certiorari granted, and were this Court to consider the merits, reversal would be dictated by these and other cases.

Respondent's claims only emphasize the conflict between the decision below and this Court's precedents. Respondent argues this case is distinguishable on its facts from this Court's past reversals (Resp. Br. at 20-37), but these claims prove too much. *Cf. United States v. Stanley*, 483 U.S. 669, 680 (1987); *Hutto v. Davis*, 454 U.S. 375, 380 (1982) (per curiam). As to the "in custody" issue, while we concede that Roman ultimately "was placed under arrest at the station house" (Pet. at 14), *Beheler* holds "that *Miranda* warnings are not required 'simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect,'" *id.* at 1125, and there is no principled difference between the "less then thirty minutes" Beheler spent at the police station, *id.* at 1121, and the "less than eighty minutes" that elapsed before Mrs. Roman made her "initial incriminating statements" (*see* Resp. Br. 21-22). As to, at the least, this statement, Roman all but concedes that *Beheler* is controlling, and requires reversal of the judgment.

As to the sufficiency-of-warnings issue, Roman's claims are at odds with the record and the law. Mrs. Roman was explicitly warned of her "rights against self-incrimination under the Constitution of the United States"; of her "right to remain silent"; of her "right to

counsel of your choice"; of her "right to have an attorney present"; of her right to a court-appointed attorney "[i]f you cannot afford [one]"; of her "right to stop answering at anytime"; and of the fact that "[a]ny statement you make may be used in court." Pet. App. 80, 82. The warnings expressly permitted Mrs. Roman to have counsel present during her initial discussion of the questions that would be asked during the diagnostic portion of the polygraph examination, but, despite this warning – and all the other warnings given – Respondent waived her right not to have counsel present while she agreed to the list of questions that would be asked (Pet. App. at 93-95), and, after the examination, and at a time when she was also expressly allowed to have counsel present, nonetheless chose not to invoke her right to counsel, and made numerous incriminating statements. Pet. App. at 5-6, 14 96, 122. On the record below, the State submits, the warnings given "reasonably 'conveyed' " the *Miranda* warnings, or their equivalent. *Duckworth v. Eagan*, No. 88-317 (U.S. June 26, 1989). In holding to the contrary, the Supreme Court of Hawaii erroneously expanded *Miranda*'s requirements, in conflict with this Court's later guidance that "[r]eviewing courts . . . . need not examine *Miranda* warnings as if construing a will or defining the terms of an easement." *Duckworth v. Eagan*, 109 S. Ct. 2875, 2880 (1989).

As Respondent nonetheless points out, the Petition was not timely filed pursuant to the 60-day deadline imposed by this Court's Rule 20.1. *See* Resp. Br. 1, 10-11, 37. This defect appears on the face of the Petition's statement of jurisdiction (Pet. at 2), is not excused by the timely filing of a request for extension, and arises out of

the State's incorrect computation of the filing deadline according to the 90-day deadline for civil cases, controlled by 28 U.S.C. § 2101(c) (1982).

The State of Hawaii, although a member of a "favored class of litigants," *Superintendent v. Hill*, 472 U.S. 445, 457 (1985) (Stevens, J., Concurring in part, and dissenting in part), does not file many petitions in this Court. We would not have done so in this case if we did not believe certiorari was warranted to correct a major distortion of the *Miranda* rule by our state's highest court – a distortion that, because of the federal basis for the ruling below,[1] cannot be corrected by amending the Hawaii constitution, and will, if allowed to stand, control our courts as a matter of *stare* decisis. *See Robinson v. Ariyoshi*, 65 Haw. 641, 653 & n.10, 658 P.2d 287, 297 & n.10 (1982).

This Court's decisions make clear that the 60-day deadline imposed by Rule 20.1 is not jurisdictional, and this Court may relax the time requirements imposed by Rule 20.1 "when the ends of justice so require." *Schact v. United States*, 398 U.S. 58, 63-64 (1970). Respondent offers no reason why this discretion should not be exercised, and this power has been invoked in favor of the Government when important and recurring issues relating to the

---

[1] Respondent's claims, *e.g.*, that *Miranda* has " 'an independent source in the Hawaii Constitution's privilege against self-incrimination' " (Resp. Br. at 15) simply do not meet the plain inference from the decision below, namely that, "on this front, the Hawaii constitutional provision [has been] ' . . . construed *in pari materia* with the [Fifth] Amendment' " (Pet. at 20 (quoting *Maryland v. Garrison*, 480 U.S. 79, 83-84 (1987)).

administration of the criminal laws are at stake. *See* R. Stern, E. Gressman, and S. Shapiro, *Supreme Court Practice* (6th ed. 1986) at 309 (citing *United States v. Goodwin*, 457 U.S. 368 (1982); *United States v. Mazurie*, 415 U.S. 947 (1974)).

This case presents recurring questions that are important to the administration of criminal law in the Fiftieth State. It also bears emphasis that the decision in *Duckworth v. Eagan*, a central basis for our seeking review here (*see* Pet. at 16-18, 21 & n.6), was not handed down until June 26, 1989, at least two weeks after the 60-day deadline under Rule 20.1 expired.

In light of the untoward results that would be occasioned be denying review despite the intervening Duckworth decision, and the harm the *Roman* ruling will have, in this and other cases, if not corrected, the interests of justice at least merit granting the petition, vacating the judgment, and remanding for further consideration in light of *Duckworth v. Eagan*.

Such a disposition, of course, would permit the state court to grant relief to Respondent on the basis of the Hawaii constitution, but would also almost certainly eliminate a severely flawed decision of federal law. *See Ashwander v. TVA*, 297 U.S. 288, 347 (1936) (Brandeis, J., concurring). This mix of factors, we submit, warrants this exercise of the power to overlook the State's error in misfiling the petition by 30 days.

II. CONCLUSION

For the reasons stated above the in the Petition for Certiorari, the Court should grant the Petition and at the least vacate the judgment and remand for further consideration in light of *Duckworth v. Eagan*, No. 88-317 (U.S. June 26, 1989).

Respectfully submitted, Honolulu, Hawaii, October 18, 1989.

KEITH M. KANESHIRO
Prosecuting Attorney
City and County of Honolulu

WARREN PRICE, III*
Attorney General
State of Hawaii

WALLACE W. WEATHERWAX*
Deputy Prosecuting Attorney
City and County of Honolulu

STEVEN S. MICHAELS
Deputy Attorney General
State of Hawaii

**Counsel of Record*

1164 Bishop Street
Honolulu, Hawaii 96813
(808) 527-6401

State Capitol
Honolulu, Hawaii 96813
(808) 548-4740

Counsel for Petitioner